

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,

vs.

ERNEST P. RICCI

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Case No.: 1:23CR00034-001

**ERNEST P. RICCI'S MOTION FOR RECONSIDERATION OF COURT'S DENIAL OF
EMERGENCY TO POSTPONE DATE TO REPORT FEDERAL BUREAU OF
PRISONS & REQUEST FOR HEARING**

NOW COMES Defendant, Ernest P. Ricci ("Ricci"), by and through counsel, hereby moves this Court to reconsider its July 10, 2024 denial of Ricci's emergency motion to postpone the July 11, 2024 date which Ricci is required to report to the Federal Bureau of Prisons ("BOP") in connection with the above-identified proceeding until such time as he has undergone and completed recovery pursuant to a medically necessary surgical procedure to address a serious pre-existing and deteriorating esophageal condition¹.

In support of the within request, Ricci states and represents as follows:

1. The Court's July 10th Text Order denying Ricci's emergency request indicates that "[T]here is no evidence before the Court of any condition from which Mr. Ricci allegedly suffers that the Bureau of Prisons cannot adequately handle."

¹ At approximately 9:00 a.m. on July 10, 2024, this Court entered a Text Order denying Ricci's request for relief. *A true and accurate copy of the Text Order is appended hereto as Exhibit A.* That said, at approximately 5:57 p.m. on July 9, 2024, the United States (the "Government") filed its opposition to Ricci's emergency motion with the Court. *A true and accurate copy of the ECF Notice indicating the Government's opposition filing is appended hereto as Exhibit B.* Upon receipt of the Government's objection, the Court "set" the deadline for Ricci's reply to the same as July 16, 2024. Notwithstanding, prior to Ricci having an opportunity to address the Government's opposition, the Court denied Ricci's request. With this filing it is Ricci's hope that the Court may reconsider its position in denying the subject motion.

See Exhibit A appended hereto. In the first instance, by the Government's own admission, the July 2, 2024 communication from Brigham & Women's Hospital (the "July 2nd Correspondence") "contains vastly more information than one would typically observe in medical documentation... ." *See Government Response in Opposition to Defendant's "Emergency" Motion to Delay Self-Report Date [Dkt. 86] at p. 3.* This admission is significant insofar as the July 2nd Correspondence expressly states that "[T]his is a highly specialized procedure and not something all Gastroenterologists practice none [sic] specifically in Rhode Island and has to be done by an **advanced endoscopist at a Tertiary care center.**" (Emphasis supplied.) *See July 2nd Correspondence at ¶1².* As such, conversely there is no evidence to support the fact that the Federal Bureau of Prisons ("BOP") has the ability and/or facilities to care for and/or treat Ricci's serious and chronic underlying esophageal condition.

2. The Government wrongfully presupposes that Ricci's recent filing is a deliberate attempt to delay his self-report date to evade his sentence. Put simply, any such suggestion is misplaced. Admittedly, Ricci was advised – for the very first time – on June 20, 2024, that the scheduled June 26th surgical procedure would not be going forward because of an "out-of-network" health insurance coverage issue. This is not something that Ricci had any control over, nor was it anything he was previously privy to. Upon being so apprised,

² The July 2nd Correspondence is appended to Ricci's emergency motion to postpone report date as *Exhibit A*. *See Dkt. 85.*

however, beginning on June 21, 2024, Ricci commenced his efforts to attempt to resolve the insurance issue, by, in the first instance, communicating with Brigham & Women's Hospital at which time he was advised that the facility was unwilling to schedule the procedure until such time it was assured the insurance coverage dispute was resolved.

3. Given that the June 26th surgical procedure would not be going forward as scheduled, Ricci next turned his attention to securing counsel to assist in his request to the Court to postpone his report date to the BOP, as well as obtaining documentation from Brigham & Women's Hospital in support of any such request. After a series of communications with his care provider, Brigham & Women's Hospital made available the July 2nd Correspondence to him on that date. At or about that same time Ricci secured new counsel in this matter. That said, given the intervening July 4th holiday and the undersigned's time away from the office in observance of the same, Ricci's motion was filed with this Court on July 9, 2024 [Dkt. 85]. Despite the Government's suggestion to the contrary, Ricci was not dilatory under the circumstances.
4. Ricci has absolutely no control over the dates that Brigham & Women's Hospital has available to reschedule any procedure. As such, any suggestion by the Government that Ricci's condition is not emergent or lacks urgency is misplaced. To the contrary, the July 2nd Correspondence plainly underscores the seriousness of Ricci's condition, and, further, describes, based upon Mr.

Ricci's prior history of incarceration, as to its physical manifestations may very well be absent surgical intervention³. See *Dkt. 85*.

5. In further support of the within, Ricci reminds the Court that Brigham & Women's Hospital has recommended that the recovery time for the so-called poem procedure will be at least one (1) month which will require, at least initially, a strictly liquid diet before Ricci can transition over to solid food. See *Dkt. 85*. Even more, Ricci will be required to be in close contact with Brigham & Women's Hospital during the recovery period. *Id.* Thus, incarceration at this time would not be conducive to the medically necessary procedure, or resulting recovery period.
6. Again, based upon the medical recommendation of Brigham & Women's Hospital it is urgent and advisable that Ricci's "report date" be postponed to allow for him to undergo, complete and recover from the medically necessary poem procedure.
7. Ricci reiterates that no party would be prejudiced should this Court grant the requested relief insofar the same is not seeking a reduction or modification of his sentence, but merely a postponement of the July 11th "report date."

WHEREFORE, for the foregoing reasons, Ricci respectfully prays that this Court reconsider its July 10, 2024 denial of his emergency motion to postpone his July 11th report date, that the Court grant his emergency motion and postpone his July 11, 2024 "report date" to the BOP until such time as he undergo, complete and recover from the

³ Ricci previously experienced a significant weight loss - 26 pounds (lbs) in 28 days - during a prior period of incarceration at the Donald W. Wyatt Detention Facility in or about April, 2023, as a result of his condition.

medically necessary surgical procedure, *to wit*, poem procedure, and that this Court award to Ricci such other further relief as this Court may deem fair, just and reasonable.

Respectfully submitted,

/s/ Christopher M. Mulhearn

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Date: July 10, 2024

EMERGENCY HEARING REQUEST

Given the nature and significance of the within request, Ricci respectfully requests an expedited or emergency in-person hearing, or such other proceeding as the Court deems necessary or appropriate to address the relief requested.

CERTIFICATION

I certify that on the 10th day of July, 2024, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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/s/ Christopher M. Mulhearn

EXHIBIT A

Christopher Mulhearn

From: cmecf@rid.uscourts.gov
Sent: Wednesday, July 10, 2024 9:00 AM
To: cmecfnf@rid.uscourts.gov
Subject: Activity in Case 1:23-cr-00034-JJM-PAS USA v. Ricci et al Order on Motion for Miscellaneous Relief

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U.S. District Court

District of Rhode Island

Notice of Electronic Filing

The following transaction was entered on 7/10/2024 at 9:00 AM EDT and filed on 7/10/2024

Case Name: USA v. Ricci et al
Case Number: 1:23-cr-00034-JJM-PAS
Filer:
Document Number: No document attached

Docket Text:

TEXT ORDER denying [85] Emergency Motion to Postpone Report Date as to Ernest P. Ricci (1): Mr. Ricci's Emergency Motion to Postpone Report Date [85] is DENIED. There is no evidence before the Court of any condition from which Mr. Ricci allegedly suffers that the Bureau of Prisons cannot adequately handle. So Ordered by Chief Judge John J. McConnell, Jr. on 7/10/2024.(Jackson, Ryan)

1:23-cr-00034-JJM-PAS-1 Notice has been electronically mailed to:

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1:23-cr-00034-JJM-PAS-1 Notice has been delivered by other means to:

EXHIBIT B

Christopher Mulhearn

From: cmecf@rid.uscourts.gov
Sent: Tuesday, July 09, 2024 5:58 PM
To: cmecfnf@rid.uscourts.gov
Subject: Activity in Case 1:23-cr-00034-JJM-PAS USA v. Ricci et al Response to Motion

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U.S. District Court

District of Rhode Island

Notice of Electronic Filing

The following transaction was entered by McAdams, John on 7/9/2024 at 5:57 PM EDT and filed on 7/9/2024

Case Name: USA v. Ricci et al
Case Number: 1:23-cr-00034-JJM-PAS
Filer: USA
Document Number: 86

Docket Text:

RESPONSE In Opposition to by USA as to Ernest P. Ricci re [85] MOTION *Emergency Motion to Postpone Report Date Replies due by 7/16/2024.* (McAdams, John)

1:23-cr-00034-JJM-PAS-1 Notice has been electronically mailed to:

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1:23-cr-00034-JJM-PAS-1 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

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Electronic document Stamp:

[STAMP dcecfStamp_ID=1096917572 [Date=7/9/2024] [FileNumber=1968727-0]
[67ca5a55848abc17df16d78d789fbb60e3a97311b4c3d1bf437adb2b2b78b65c1fe2
055649f823bc17a0be77387b57c8dfc81fa45563ff11ab168105d34c3419]]